Q. I notice here you have a record goes all the way back to 1913, and some of those years you say "No record." "No record"—that does not mean there was not any income tax return filed; that means you don't have that—don't find it? A. That means we don't have any record of it (29).

WALLACE C. SUMMERS,

the next witness, having been first duly sworn, testified as follows:

Direct Examination by Mr. Vaden.

Q. Will you tell us your name, please, sir? A. W. C. Summers—Wallace C.

* * *

Q. Yes, sir. And what do you do, please, sir? A. I am an auditor with Homer K. Jones and Company.

* * *

Q. Are you a certified public accountant? A. No, sir, I have a license but I am not certified.

Q. Then, I understand you are what I would call a public accountant? A. Yes.

Q. I see. How long have you been with Homer K. Jones, Mr. Summers? A. Something over twenty years, a little over twenty years (33).

* * *

Q. And they have been there how long? A. Oh, thirty or forty—forty years, I guess.

Q. And you work out of that office. I will ask you whether or not you had occasion to make out income tax returns for Mr. William Epstein, and in particular, returns for the years 1949, '50, '51, and '52. And before you answer that, I can hand you some returns which will give you an opportunity to see. I am referring now to Exhibit 1 through 5 of Sheley. A. Yes, I prepared them (34).

Q. Yes. And in addition, I will ask you whether or not you had occasion to prepare other returns, '45, '46, '47, and '48? A. I think I began about '45 (35).

* * *

Q. Yes. Did you ever see Mr. Kirschner along in there in and about the business on Beale Street? A. Oh, I saw him once in a while, yes (37).

* * *

Q. Well, as a public accountant, do you know, on income taxes, whether or not it was adequate for the purpose of—? A. I think it was adequate to get a tax return, yes, sir (38).

* * *

Q. Mr. Summers, speaking about—there has be some conversation here about the partnership return for the year 1952 relative to Epstein's Loan Office at 162 Beale. I am going to ask you, look at this first, and tell me what it is, and then we can let counsel see it? A. Well, that was prepared after Mr. Epstein took his nephew into the business.

Q. Yes. And that is Mr. Meynard Epstein, I believe (39), who went in with Mr. William Epstein? A. Yes (40).

* * *

Cross Examination by Mr. Bernstein.

Q. Mr. Summers, there seems to be a little misunderstanding about what was meant by "no partnership books" Did you mean by that statement that there was no double entry system of bookkeeping, is that what you mean? A. Yes, sir, that is what I mean.

Q. You did not mean to imply by that that Mr. Epstein did not keep a set of books? A. I did not mean to indicate that he did not have any kind of record at all, no.

* * *

Q. I would like to ask you, Mr. Summers, if you had seen this book that Mr. Louis Weis kept? A. Well, I imagine I have. It looks like the book (44).

Q. Do you know of your own knowledge if this book was kept in the day-to-day doing of business in that store? A. Well, it seemed to be. I just took the figures at the end of the year from that, you see.

Q. You took the figures from this book? A. At the end of the year, yes, sir.

* * *

Q. Mr. Summers, I would like to ask you if those are the books you got the figures from for your income tax returns? A. Yes, sir, it looks very much like them.

Q. And do those books agree with the income tax returns that they filed? A. Yes, sir, that is where I got my figures from to file his return.

Q. I would like to give you, Mr. Summers—

Mr. Will Gerber: Wait, wait, wait.

Mr. Vaden: Are you going to introduce them?

Mr. Will Gerber: Yes, we want to introduce those books, and mark them exhibits to his testimony, put them in the record, "A," "B," "C" (45). Epstein were accordingly marked as Collective Exhibit "E" to the cross-examination of Mr. Summers, and same will be found among the exhibits hereto.) (Said income tax returns of William Epstein were accordingly marked as Collective Exhibit "F" to the cross-examination of Mr. Summers, and same will be found among the exhibits hereto.)

Q. Now, Mr. Summers, these are the returns, '37 through '47 for William Epstein, '43 through '52 William and Pearl Epstein, '38 through '47 Pearl Epstein, '37 through '49 J. P. Kirschner, and '52 partnership return from the files of Homer K. Jones and Company?

Now, I would like to ask you, Mr. Summers, if the '52 book isn't the book of the partnership from which that partnership return was filed. A. Yes.

Q. I would like to read you an excerpt from Regulation 111 of the Commissioner's Regulations, amended to October 5, 1949, Section 2941-3, dealing with methods of accounting:

> "It is recognized that no uniform method of accounting can be prescribed for all taxpayers (49) and the law contemplates that each taxpayer shall adopt such forms and systems of accounting as are in his opinion best suited for his purpose. Each tax-

payer is required by law to make a return of his true income. He must, therefore, maintain such accounting records as will enable him to do so."

You have said, is that correct, that these books were adequate under this regulation? A. They were adequate to make a tax return, yes, sir.

Q. That is what the regulations are. Mr. Summers, I would like to ask you, do you file quite a few income tax returns? A. Oh, yes, sir.

Q. Are such items as sales tax and tobacco tax, and items like that usually estimated? A. Practically all of them are.

Q. Did you estimate the sales tax taken by Mr. Epstein on his return? A. Yes.

Q. Did Mr. Epstein ever try to conceal anything concerning the Kirschner business from you? A. No, sir, he did not (50).

* * *

Q. Now, Mr. Summers, on most returns that you file, do the people have a double-entry bookkeeping system? A. No, most of them would not have.

Q. They have systems somewhat similar to this, do they not? A. A lot of farmers don't have any books at all.

Q. Do you do an audit most of the time when you file tax returns? A. No, sir.

Q. Mr. Summers, would you tell me the circumstances that surrounded the filing of the amended 1951 return? A. In some way I discovered that Mr. Epstein had a loan at the Manhattan Bank and that there were some Government bonds up there as collateral, and I did not know it before—not having made an audit, I did not know that that loan—that he had such a loan. So I examined—Mr. Epstein and myself went up and looked at those bonds, and I made an amended return to include those constructive receipts. Although those coupons had not been clipped (51) from the bonds, it was really constructive receipts, though.

Q. Do you find that it is a common misunderstanding among taxpayers that they don't have to pay tax until

they get their money out of items like that, until they get their money out of it? A. An officer down at the Manhattan Bank told me he did not know they had to do that.

* * *

Q. Mr. Summers, as soon as you found out that the interest on the Government bonds had not been included, and you determined that an amended return should be filed, did you tell Mr. Epstein about it? A. Oh, yes, I immediately filed the return.

Q. Did he have any objection at all to filing it? A. Why, no, none.

Q. He paid the tax that was due on the amended return? (52) A. Yes.

* * *

Re-Direct Examination by Mr. Vaden (53).

* * *

Q. Now, you spoke about this sales tax matter. While you say you estimated it, will you tell us whether or not you estimated it from information you got from Mr. Epstein? A. No, I don't know, I think maybe it was my figures. I think I was figuring on the basis of him living out in Hein Park, and what expenses he might have, that that would be about right according to the way other people paid (54).

* * *

Q. And did you confer with him about what he thought would be about right on his sales tax? A. I don't know. I am pretty sure they were my figures, but we discussed it, I am sure.

Q. That is what I say, you discussed it with him? A. But I am sure it is my figures (55).

* * *

H. A. SHELEY,

the said witness, upon being recalled to the stand, and having been previously sworn, testified further as follows:

* * *

Direct Examination (Further) by Mr. Vaden.

* * *

Q. All right. '21-'23, for those three years, "No record." Now, under your system—and you say you are in charge of files and records—I simply want to know what the words "No record" means? A. That means that no returns have been filed for those years.

Q. There is no record of any returns having been (57) filed for those years? A. That is right.

Q. So, then, what you mean there that means—do you keep a record of all returns that were filed so you can check against them? A. Yes, sir.

Q. And for those years you had no record of any returns being filed? A. No, sir.

Q. That is what the words mean? A. That is right (58).

* * *

Cross Examination by Mr. Will Gerber.

Q. Mr. Sheley, did anybody talk to you about this case after you left the stand after you testified this morning? A. Well, yes, sir.

Q. Somebody talked to you about it. Now, you testified this morning that "No record" meant you could not find a record, didn't you? Didn't you testify to that this morning? A. Well, I might—maybe I did.

Q. Well, didn't you—didn't you testify this morning that "No record" meant you could not find a record, is that right? A. If I couldn't find it, there is no record.

Q. Sir? A. If I couldn't find it, there is no record.

Q. There is no record. Now, you want to tell us that this "No record" means no return was filed? A. Yes, that is what it means.

Q. Didn't you testify this morning the reverse? Didn't you testify this morning that "No record" meant no return could be found? Didn't you tell us that when you testified this morning? (59).

Mr. Vaden: If the Court please, if no record could be found—

A. That is right.

* * *

Q. I am asking you if you weren't talked to after you left this stand this morning by some member of the District Attorney's office or some assistant? A. Yes, sir (60).

CAMERON D. HUDDLESTON,

the next witness, having first been duly sworn, testified as follows:

Direct Examination by Mr. Vaden.

* * *

Q. And when you were with the Internal Revenue Department in Memphis, were you what we commonly denote as a Revenue Agent? (61.) A. I was a Revenue Agent in the Field Audit Division.

* * *

Q. Yes. Now, I will ask you whether or not you had occasion to go into—I don't know how many years involved, but I expect starting in '47, some time back—into the question of income tax returns of William and Pearl Epstein? A. Yes, sir, I did.

Q. It appears they are in business down on Beale Street. And do you remember about when that was, when it was assigned to you? A. In 1953, the early part.

Q. '53?

Mr. Will Gerber: What month did you say? A. The early part.

Mr. Will Gerber: The early part? (62.)

* * *

Q. Intelligence section. Now, tell us about this. Could you tell us, for instance, about how many—I don't know whether you keep a card on it or not, but about how many days you figure you put in on the Epstein matter before your transfer? I don't mean consecutive days, but generally speaking, working days? A. It was in the neighborhood of sixty days (64).

* * *

Q. Will you tell us whether the taxpayer submitted any books, records and papers to you which would verify the figures on the return? A. Yes, sir, he did.

Q. And were you able to verify the whole return from the books, records and papers? A. The figures on the return did agree with the books and records that he gave me.

Q. I see. I see. All right. Now, then, after the books, records and papers were given to you, were you then able to verify the figures from the books, records and papers? A. Yes, sir (67).

Q. And how did you do that?. A. Well, there were totals on the books, and I verified some of the addition and checked—

* * *

A. (Continuing) There were totals on the books that could be checked with totals on the returns.

* * *

A. (Continuing) And there were various expressions on there that could be verified with figures on the returns, and, as I remember, I read some adding machine tapes and verified to the extent possible the figures that were on the books and records.

Q. All right, tell us what else you did. A. I had Mr. Epstein give me some contracts for sale of real estate and I had him give me his personal records on his rental income, dividends and interest income, and so forth.

* * *

A. (Continuing) And I had him give me his records of his pawn brokerage business. Those were my three primary sources of information.

Q. Now— A. (Continuing) Excuse me a minute. I might say I (68) asked him to give me his cancelled checks and bank statements, too.

Q. Yes, sir. And upon receipt of all of those, what was then your opinion about whether or not the return was true or correct? A. I felt like the returns were not correct.

Q. Yes, sir. Then what did you proceed to do? A. I resorted to the net worth method of computation to attempt to verify the accuracy of the returns.

Q. Yes. Now—well, you have mentioned that he did have some books. Will you tell us whether or not, if you know, anything about the books being incorrect. A. I don't know about that. Do—you mean do I know that the books were incorrect, or do I know that they did not agree with what I felt was the correct income—is that what you mean?

Q. Well, I mean by that, incorrect or incomplete, whichever you prefer. A. I felt like that the books did not reflect his true income.

Q. Oh, I see. And that is when you decided to bring into play the net worth method? A. Yes, sir (69).

* * *

Q. Sales store. Speaking about these books, can you give us some idea about what sort of books he did maintain, the ones that you saw?

* * *

A. Well, those books are of a type commonly known as single-entry books. There was one page for receipts, and one page for purchases, and one page for other expenses, and the total things that he had on there would be in sales and his purchases and various expenses, miscellaneous expenses, like insurance, light, gas and water—miscellaneous expenses of that sort. And he also had a section devoted to his personal expenditures that were paid out of his business bank account. And he had another section devoted to salaries, showing wages paid and Social Security and withholding tax, and the Social Security number of his employees, and so forth (71).

* * *

Q. Do you know who started keeping the books somewhere around—you say January 1, '49—do you know who started keeping the books after that? A. They were kept in the public accounting firm of Louis Weis (72).

* * *

Q. Now, did you have any conversation with Mr. Epstein about the way he conducted his business, that is, the purchase of merchandise and the loaning of money, and so forth? A. Yes, I asked him about that generally, how it operated, and not too much detail.

Q. Well, he was at that time in the pawn broking business, that is true? A. Yes, sir.

Q. Did you find out or were you able to tell whether he used much or little cash in the conduct of that business? A. He used a great deal of cash in that business.

Q. Did you have any conversation with him about the cash he kept on hand? A. Yes, sir.

Q. What did he say? (74.) A. He said he kept a great deal of cash on hand, and because he needed four or five or six thousand dollars a week in his business. And so I asked him if he could give me a record of the cash on hand as of, say, the beginning of certain years, like '50 and '51, '52 and '53, and he said that he could not, that he had no record like that. And I asked him, therefore, what would have been the most amount of—the largest amount of cash he had ever had on hand, and he said he thought around thirty-five or forty thousand dollars would be the largest amount that he had ever had on hand. I needed those figures for my net worth statement.

Q. I see. Did he give any particular reason for keeping cash on hand in the amount of thirty, thirty-five—whatever it was—thirty-five thousand dollars? A. Well, of course I knew that he needed a lot of cash in his business, because most of his business is cash, and he told me that he had once been short of cash and it had hurt his business a great deal, I believe he said back in '29— (75).

* * *

Cross Examination by Mr. Will Gerber.

Q. Mr. Huddleston, you say you went down to Mr. Epstein's place in the early part of '53 to make a routine check? A. Yes, sir.

Q. Was it a routine check, or anything other than a routine check? A. It was a routine check.

Q. It was a routine check. You went in Mr. Epstein's place. Did he cooperate with you? A. Yes, sir.

Q. Anything you asked him for, he turned over to you, did he not? A. Yes, sir.

Q. You asked him for his books for '49, '50, '51, and '52, and he turned them over to you? A. That is right.

Q. Is that right? A. Yes, sir.

Q. You asked him for his checks and he turned them over to you, is that right? A. That is right.

Q. You asked him for real estate contracts and he (82) turned them over to you, is that right? A. That is right (83).

* * *

Q. Mr. Huddleston, in your examination out there, why didn't you examine the Kirschner books? A. There were no—Mr. Epstein said there were no Kirschner books, that they must have been destroyed.

Q. Are you sure about that? A. Yes, I am positive about that.

Q. Let me ask you this. Why didn't you check the Epstein books prior to 1949? A. Because he said he did not have them, that is why.

Q. He said he did not have them. Don't you know, Mr. Huddleston, that in 1939 Mr.—was in '49 or—don't you know that Mr. Neal, a member of the Internal Revenue Department, the same department that you belong to, in 1949 he went into Mr. Epstein's place and asked for the books for 1946, and those books were turned over to him and they were checked at that time, don't you know that (87) to be a fact? A. I think that is true, yes.

Q. Sir? A. I think that is true, yes.

Q. Then you tell us now that Mr. Epstein told you that he did not have any books prior to 1949? A. That is exactly right.

* * *

Q. I want to show you some books here and ask you if this isn't the Kirschner books for 1938? A. I never saw these books before.

Q. I will ask you if this isn't the Kirschner books for 1942? I will ask you to look at them. A. Well, they say J. P. Kirschner.

Q. That is right, that is the book, isn't it? A. In the year '42.

Mr. Will Gerber: That is right (88).

A. But I never saw these books before.

Q. I ask you if these aren't Kirschner books for 1948?

* * *

Mr. Will Gerber: If Your Honor please, I have shown by this witness that Mr. Neal went down there in '49 and asked for the '46 books, and they were there, and the '46 books are there, too, and I want to show the books in here. They are available to Mr. Norris, anybody in the Intelligence Department any time, and have always been there. I just want to prove that (89).

* * *

Mr. Will Gerber: I want to show the books here, if Your Honor please. I want to show the books here for Kirschner '37 to '49, the whole time he operated.

The Court: Now, as the Court has already remarked, there is a way to do that. You have shown the witness certain books and records, which (90) he says he has never seen before.

Mr. Will Gerber: Well, he could have seen them.

The Court: All right.

Mr. Will Gerber: They are there.

The Court: Mr. Marshal, put the books all back over there, please, sir (91).

* * *

Q. Now, Mr. Huddleston, you say you left here when? A. June 20th, '54.

Q. June 20th, '54. Did you find anything wrong with these books so far as you were concerned? A. Were there any errors in the books, you mean?

Q. No, I am talking about the adequacy of the books. A. The books—

Q. —From the standpoint of complying with the regulation.

Give me the regulation.

Section 29—29, 41-3 of the Internal Revenue Service.

> "It is recognized that no uniform method of accounting can be prescribed for all taxpayers, and the law contemplates that each taxpayer shall (97) adopt such forms and systems of accounting as are in his judgment best suited to his purpose. Each taxpayer is required by law to make a return of his true income. He must, therefore, maintain such accounting records as will enable him to do so."

Do those books comply with this regulation?.

A. They do in form, yes.

Q. They are adequate insofar as this regulation is concerned, is that right? A. They do in form, yes.

Q. What did you say—form? I say, are they adequate in accordance with the terms of this regulation? A. Well, I would say it is a question of substance versus form in this case, because I don't think some of the figures on there are right.

Q. Well, did you find anything wrong there with the way the books were kept? A. If the figures had been put down properly, they would be all right.

Q. Well, you don't know whether they are put down properly or not? A. I am giving you my opinion, Mr. Gerber.

Q. Oh, you are guessing, is that right? (98) A. I am giving my opinion.

Q. I see, and guessing, is that right? An opinion is a guess— (99).

* * *

Q. Did you tell anybody about this? A. Anybody—?

Q. When you found those books in that shape, did you inquire about it? A. No, I did not.

Q. Why didn't you? A. I did not make the concluding investigation, Mr. Gerber.

Q. Why didn't you—you found those books were not being kept correctly and did not suit you—why didn't you tell anybody about it? A. As previously stated, when we get to a certain point in the investigation, we are through—supposed to call the Special Agent to investigate, and we are to conclude, we are to stop our investigation.

Q. When did you tell him the books—or the Special Agent tell him—tell him the books did not suit—not kept in accordance with the regulation—didn't you tell him that? A. I told him I thought the books were wrong.

Q. All right, when did you tell him that? A. Well, we had talked about the case several weeks before I left.

Q. When did you leave? (100) A. June 20, '54.

Q. Well, how long—you say you went to work at Mr. Epstein's place in the early part of '53, and you checked the books for about sixty days, is that right? A. Yes.

Q. You knew then after you checked the books they were not correct in your estimation, is that right? A. I was doing exactly as our regulations require us to do, and that is to suspend our investigation until the Special Agent can work with us, and then we are to proceed together after that.

Q. Well, the books were not correct, Mr. Huddleston; why didn't you notify somebody in the Department about it? A. I did.

Q. Who did you notify? A. I notified my superior in Nashville. That is how Mr. Norris happened to get in on the case.

Q. When did you notify your superior about the books in Nashville? A. I notified my superior that I thought the Special Agent ought to be helping.

Q. When did you do that? A. Well, I would have to ask Mr. Norris if he can find that letter in the file on that. It is part of the file (101).

Q. All I want to ask you about is when did you notify your superior about turning it over? A. I would have to refresh my memory on that, because I haven't seen the letter for a long time.

Q. Well, where is it?

Mr. Will Gerber: Do you want to turn it over to him?

Mr. Fitzhugh: No, sir.

Q. Have you got the Agent's report? A. No, sir.

Q. Where is the Agent's report? A. I did not write the Agent's report.

Q. Why didn't you write the Agent's report? A. because I did not get to conclude the investigation.

Q. This was a very serious case, wasn't it, Mr. Huddleston? You had guessed Mr. Epstein was all wrong about the way he kept the books, and there was something wrong about this thing; why didn't you make up the Agent's report, Mr. Huddleston? A. The case was not over, Mr. Gerber.

Q. I know, but you were making arrangements—getting ready to leave here, Mr. Huddleston, and shouldn't you have made up the Agent's report before you left? A. No, sir, I could not because I would have to wait until Mr. Norris could work with me (102).

Q. But you were on the case before Mr. Norris. Why didn't you make out the report of what you did? A. Because I would have been wrong if I did, and I would have been subject to criticism by my superiors.

Q. Then you say you turned this case over to Mr. Norris when. In '54? A. Around June, some time around June.

Q. June, '54? A. Yes.

Q. Mr. Huddleston, would it interest you to know that it was not until May 13, '55, that Mr. Epstein received a letter from Mr. Rountree, the Internal Revenue Director, that the report—"The Internal Revenue Agent has submitted a report to this office to the effect that the books of account and records maintained by you and recording operations of your business were not sufficient for the pur-

pose of verifying your respective income taxes. The report indicates that the records covering income and liabilities of your business as a pawn broker are insufficient and not sufficiently detailed for the purpose of determining the correct amount of income subject to tax by you."

Isn't it strange, when you left in '54, and turned it over to Mr. Norris in June, '54, and no letter was (103) sent to Mr. Epstein until May 13, '55?

* * *

Q. I say, you found out in '53 that these records were not adequate in your opinion, yet nobody in the Internal Revenue Department notified him of this fact until May 13, '55, two years later, is that right? A. Mr. Gerber, I suspended my examination some time in '53.

* * *

Q. This letter says that "The Internal Revenue Agent has submitted a report to this office". Who was the Internal Revenue Agent that reported on that report? A. I think that would be Mr. Raines.

Q. Who? A. Mr. Raines (104).

Q. Mr. Raines? A. Yes, sir.

Q. Do you know when he submitted it? A. No, I don't.

Q. You don't know anything about that either? A. No, sir.

Q. I see. You knew at that particular time that his returns were being made by Homer K. Jones and Company, is that right? A. They had been regularly, yes, in the past.

Q. Did you go to the trouble of calling Homer K. Jones and Company and telling them that Mr. Epstein's books were not being kept like you wanted them kept? A. No, sir (105).

* * *